



Council of the
European Union

Brussels, 25 September 2015
(OR. en)

12414/15

**Interinstitutional File:
2015/0211 (COD)**

LIMITE

**ASIM 95
CODEC 1255
COWEB 91**

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	11845/15 ASIM 81 COWEB 86 CODEC 1171 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU

On 17 September 2015, the Friends of Presidency (Asylum) examined the abovementioned Commission proposal. On the basis of the discussions, the Presidency has prepared the revised version of the document as set out in Annex, for further examination at the JHA Counsellors meeting on 2 October 2015.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Directive 2013/32/EU of the European Parliament and of the Council¹ enables Member States to apply specific procedural rules, in particular accelerated and border procedures, in well-defined circumstances where an application for international protection is likely to be unfounded, including where the applicant is a national of a country that has been designated as safe country of origin by national law and that, in addition, may be considered as safe for the applicant concerned in light of his or her particular circumstances. The same rules can be applied in the case of stateless persons in relation to third countries in which they were formerly habitually resident.
- (2) Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin at national level. However, only certain Member States have designated in their national law safe countries of origin, which means that not all Member States currently can make use of the related procedural facilities provided for in Directive 2013/32/EU. In addition, due to existing divergences between the national lists of safe countries of origin that have been adopted by the Member States, which could result from differences in the assessment of the safety of certain third countries or from differences in the nature of the flows of third country nationals they are facing, the concept of safe country of origin as defined in Directive 2013/32/EU is currently not always applied by the Member States in respect of the same third countries.

¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

- (3) In light of the very sharp increase that has been experienced since 2014 in the number of applications for international protection made in the Union and the resulting unprecedented pressure on Member States' asylum systems the Union acknowledged the need to strengthen the application of the safe country of origin provisions of Directive 2013/32/EU, as an essential tool to support the swift processing of applications that are likely to be unfounded. In particular, in its conclusions of 25 and 26 June 2015, the European Council referred, in relation to the need to accelerate the treatment of asylum applications, to the intention of the Commission as set out in its Communication on a European Agenda on Migration¹ to strengthen these provisions, including the possible establishment of an EU common list of safe countries of origin. Moreover, the Justice and Home Affairs Council in its conclusions on safe countries of origin of 20 July 2015 welcomed the intention of the Commission to strengthen the safe countries of origin provisions in Directive 2013/32/EU, including the possible establishment of an EU common list of safe countries of origin.

¹ COM (2015) 240 final, 13.5.2015.

- (4) An EU common list of safe countries of origin should be established on the basis of the common criteria set in Directive 2013/32/EU as it will facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept and, thereby, increase the overall efficiency of their asylum systems as concerns applications for international protection which are likely to be unfounded. The establishment of an EU common list will also address some of the existing divergences between Member States' national lists of safe countries of origin, whereby applicants for international protection originating from the same third countries are not always subject to the same procedures in the Member States. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those appearing on the EU common list as safe countries of origin, the establishment of such a common list will ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on this list. This will accordingly facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. In that context, the possibility to take in the future further steps of harmonisation that could lead to the elimination of the need for national lists of safe countries of origin should be considered after a period of three years following the entry into force of this Regulation, on the basis of a report to be presented by the Commission.¹

¹ LT suggested deleting the last sentence

- (5) The provisions of Directive 2013/32/EU related to the application of the safe country of origin concept should be applicable in relation to third countries that are on the EU common list established by this Regulation. This means, in particular, that the circumstance that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and does not dispense therefore with the need to conduct an appropriate individual examination of the application for international protection. In addition, it should be recalled that, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (6) The Commission should regularly review the situation in third countries that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of a third country on the EU common list, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of suspending the presence of this third country from the EU common list for a period of one year where it considers, on the basis of a substantiated assessment, that the conditions set by Directive 2013/32/EU for regarding a third country as safe country of origin are no longer met. For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service (EEAS) and the information from Member States, the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the presence of a third country from the EU common list for a period of maximum one year, where it has proposed an amendment to this Regulation in order to remove this third country from the EU common list of safe countries of origin. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (7) Following the conclusions on safe countries of origin of the Justice and Home Affairs Council of 20 July 2015, where Member States have agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, EASO organised on 2 September 2015 an expert-level meeting with the Member States where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo*¹, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning Directive 2013/32/EU.
- (8) In accordance with Directive 2013/32/EU a country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU of the European Parliament and of the Council², no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
- (9) Based on a range of sources of information, including in particular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations, a number of third countries are considered to qualify as safe countries of origin.

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

- (10) As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in four out of 150 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 7,8% (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. At that time the assessment was that Albania fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Albania will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (11) As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 4,6% (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.

- (12) As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided by principle substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in six out of 502 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 0,9% (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. At that time the assessment was that the former Yugoslav Republic of Macedonia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and the former Yugoslav Republic of Macedonia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (13) As regards Kosovo*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 6,3% (830) of asylum applications of citizens of Kosovo* were well-founded. At least six Member States have designated Kosovo* as a safe country of origin.

- (14) As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 1 out of 447 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Montenegro will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (15) As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 1,8% (400) of asylum applications of citizens from Serbia were well-founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Serbia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (16) As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2899 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Turkey fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Turkey will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (17) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (18) This Regulation respects the fundamental rights and observes the principles recognized by the Charter.
- (19) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]

OR

[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.

In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

- (20) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes an EU common list of third countries which shall be regarded as safe countries of origin within the meaning of Directive 2013/32/EU.

Article 2

EU common list of safe countries of origin

1. Third countries listed in Annex I to this Regulation are safe countries of origin.
2. The Commission shall regularly review the situation in third countries that are on the EU common list of safe countries of origin, based on a range of sources of information, including in particular regular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.
3. Any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 3 to suspend the presence of a third country from the EU common list of safe countries of origin.

Article 3

Removal of a third country from the EU common list of safe countries of origin in case of sudden change of situation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. In case of sudden changes in the situation of a third country that is on the EU common list of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Annex I of Directive 2013/32/EU and, if those conditions are no longer met, shall adopt, in accordance with Article 290 TFUE, a Decision suspending the presence of that third country from the EU common list for a period of one year.
3. Where the Commission has proposed an amendment to this Regulation in order to remove a third country from the EU common list of safe countries of origin, it can on the basis of a substantial assessment referred to in paragraph 2 extend the validity of the delegated decision adopted pursuant to paragraph 2 for a period of maximum one year.
4. The power to adopt delegated acts referred to in this Article shall be conferred on the Commission for a period of 5 years from [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

5. The delegation of power referred to in this Article may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
6. As soon as it adopts a delegated act in accordance with this Article, the Commission shall notify it simultaneously to the European Parliament and to the Council.
7. A delegated act adopted pursuant to this Article shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.

Article 4

Amendments to Directive 2013/32/EU

Directive 2013/32/ EU is amended as follows:

- (1) In Article 36 paragraph 1 is replaced by the following:

“1. A third country designated as a safe country of origin in accordance with this Directive by national law or that is on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 of the European Parliament and of the Council* [this Regulation] may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

* Regulation (EU) No XXXX/2015 of the European Parliament and of the Council of [date] establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU, and amending Directive 2013/32/EU

- (a) he or she has the nationality of that country; or
- (b) he or she is a stateless person and was formerly habitually resident in that country, and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.”

(2) In Article 37 paragraph 1 is replaced by the following:

“1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin other than those on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 [this Regulation] for the purposes of examining applications for international protection”. **In case the presence of a third country has been suspended from the EU common list of safe countries of origin pursuant to Article 3(2) of that Regulation, Member States shall not designate that country as a safe country of origin at national level. In case a third country has been removed from the EU common list of safe countries of origin pursuant to Article 2(3) of that Regulation, a Member State may only designate that country as a safe country of origin at national level where this Member State establishes that, following changes in the situation of that country, it fulfils again the conditions set out in Annex I of this Directive.**

(3) In Annex I the title is replaced by the following:

“Designation of safe countries of origin for the purposes of Article 36 and Article 37(1)”.

Article 5

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

EU common list of safe countries of origin referred to in Article 2

Albania,

Bosnia and Herzegovina,

the former Yugoslav Republic of Macedonia,

Kosovo^{*},

Montenegro,

Serbia,

Turkey.



* * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.